SPECIFIC PERFORMANCE — GENERAL NATURE AND SCOPE OF EQUITABLE RELIEF — PLAINTIFF'S DELAY WHERE TIME IS EXPRESSLY OF THE ESSENCE. — The plaintiff contracted to buy land from the defendant for $16,000. Of this $1,000 was to be paid down and the remainder paid in $1,000 annual installments. The agreement expressly provided that time was of the essence and that on any default, the whole sum should be due, or the contract determined at the option of the vendor, any payments made to be retained as liquidated damages. The first deferred installment was not paid on the day. The defendant at once gave notice that the contract was determined. Thereupon the plaintiff tendered the amount due, which was refused. He now sues in chancery for relief. *Held*, that he will be relieved from forfeiture of the money paid, but be denied specific performance. *Steedman* v. *Drinkle*, [1916] A. C. 275.

How far equity shall ignore the plaintiff's delay in the face of a provision that time is essential depends upon balancing desiderata. On the one hand, the exigencies of business require the uniform enforcement of precise rules concerning contracts. In the name of this principle startling forfeitures have been allowed in this country and Canada. *Steele* v. *McCarthy*, 1 Sask. 317, 7 W. L. R. 902; *Iowa, etc. Land Co.* v. *Mickel*, 41 Ia. 402; *Heckard* v. *Sayre*, 34 Ill. 142; *Brown* v. *Ulrich*, 48 Neb. 409, 67 N. W. 168. *Cf.* Pound, "Decadence of Equity," 5 COL. L. REV. 20. On the other hand, a purchaser under a contract to buy land generally acquires an equitable estate analogous to that of a mortgagor, and to divest him of it because of a slight delay is inequitable forfeiture, even though his money is returned. Accordingly other American cases have refused to enforce harsh provisions as to time literally. *Ewing* v. *Gordon*, 49 N. H. 444, 460; *Hall* v. *Delaplaine*, 5 Wis. 206, 216; *Steele* v. *Branch*, 40 Cal. 3, 11; *Edgerton* v. *Peckham*, 11 Paige 352. A condition precedent to a right to a legal title is not generally a condition precedent to the vendor-purchaser relationship out of which the equitable estate arises. But this point appears to have been overlooked at times. *Wells* v. *Smith*, 2 Edw. Ch. 78; *Glock* v. *Howard & Wilson Colony Co.*, 123 Cal. 1, 55 Pac. 713. See POMEROY, EQUITY, § 455. In no case should a court of equity be concluded by a bare recital that time is essential, but should look to the underlying intention of the parties in regard to creating a vendor-purchaser relationship. See FRY, SPECIFIC PERFORMANCE, 3 ed., 492. However, if one party actually needs quick performance and the other knows it, there is no difficulty. *Judd* v. *Skidmore*, 33 Minn. 140, 22 N. W. 183; *Ewing* v. *Crouse*, 6 Ind. 312; *Tilly* v. *Thomas*, 3 Ch. App. 61. The English law was originally lenient in enforcing time provisions, but Lord Eldon began to apply more rigid rules which were followed. See *Boehm* v. *Wood*, 1 J. & W. 419, 420; *Levy* v. *Lindo*, 3 Meriv. 81, 84. *Accord, Eaton* v. *Lyon*, 3 Ves. 689; *Hudson* v. *Bartram*, 3 Madd. 440, 447. See 27 HALS. LAWS OF ENGLAND, 67. However, in 1873 a reaction toward liberality set in, specific performance being granted after default in spite of express provision that time was of the essence and that on default the vendors might repossess themselves of the land without obligation to repay the purchase money. *In re Dagenham Dock Co.*, 8 Ch. App. 1022; *Kilmer* v. *British, etc. Lands, Ltd.*, [1913] A. C. 319; *Snell* v. *Brickles*, 49 Can. S. C. 360; *Whitla* v. *Riverview Realty Co.*, 19 Man. 746. But the first two of these cases failed to recognize the severability of relief against forfeitures of installments and the granting of specific performance. See *Snell* v. *Brickles*, *supra*, 382; *Labelle* v. *O'Connor*, 15 Ont. L. R. 519, 546. The principal case, recognizing this distinction, reaches a result not perhaps unjust in view of the early breach and the absence of excuse offered, but indicates a tendency to revert to Eldonian strictness in regard to specific performance.

STATUTE OF FRAUDS — SALES OF GOODS — GOODS IN POSSESSION OF VENDEE AT TIME OF SALE. — A number of shares of stock in the possession of a pledgee, were orally sold to him by the pledgor. Thereafter the pledgee stated

to witnesses that he owned the stock. In a suit for the purchase price the defense was that there was no delivery to take the case out of the Statute of Frauds. *Held*, that the sale was valid. *Wilson* v. *Hotchkiss*, 154 Pac. 1 (Cal.).

Section 17 of the Statute of Frauds requires that the buyer under an oral contract "shall accept part of the goods so sold and actually receive the same." England has so construed this section as to uphold a sale whenever the buyer has done an act with reference to the goods which recognizes a preëxisting contract of sale. *Kibble* v. *Gough*, 38 L. T. R. (N. S.) 204; *Page* v. *Morgan*, 15 Q. B. 228. *Cf. Taylor* v. *Great Eastern R. Co.*, [1901] 1 K. B. 774. Under this construction it would seem that a declaration of ownership by a purchasing bailee would be a verbal act of recognition. *Edan* v. *Dudfield*, 1 Q. B. 302; *Taylor* v. *Wakefield*, 6 El. & Bl. 765, 770. See *Lillywhite* v. *Devereux*, 15 M. & W. 285, 291. New York, however, has laid down a rule, accepted in several other American jurisdictions, that transfer of possession cannot be evidenced by mere words. *Shindler* v. *Houston*, 1 N. Y. 261. See WILLISTON, SALES, § 87. And this rule has been applied to invalidate a sale to a bailee in possession unless the form of returning the article and receiving it anew was gone through. *In re Hoover*, 33 Hun. (N. Y.) 553; *Dorsey* v. *Pike*, 50 Hun. (N. Y.) 534. But *cf. Bristol* v. *Mente*, 79 N. Y. App. Div. 67, 80 N. Y. Supp. 52. Other courts have recognized that it would not be expedient to require a re-delivery to a purchasing bailee. *Smith* v. *Bryan*, 5 Md. 141; *Snider* v. *Thrall*, 56 Wis. 674, 14 N. W. 814. But *cf. Silkman Lumber Co.* v. *Hunholz*, 132 Wis. 610, 112 N. W. 1081. These decisions are supported by the analogy of the case of gifts, for a parol gift to a donee in possession at the time of the gift, is valid. *Tenbrook* v. *Brown*, 17 Ind. 410; *Wing* v. *Merchant*, 57 Me. 383; *Winter* v. *Winter*, 4 L. T. R. (N. S.) 639. Some courts have gone even further and recognized as valid, parol sales of goods not in the possession of either the owner or the buyer. *Brown* v. *Wade*, 42 Ia. 647, 650; *Calkins* v. *Lockwood*, 17 Conn. 154, 173. *Contra, Alderton* v. *Buchoz*, 3 Mich. 322. The principal case seems correct in distinguishing purchases by a bailee from sales when the seller is in possession. *Cf. Malone* v. *Plato*, 22 Cal. 103, with principal case.

TRADE-MARKS AND TRADE NAMES — PROTECTION APART FROM STATUTE — RECOVERY OF PROFITS ON SALES UNDER INFRINGING DESIGN.— The plaintiffs adopted as a trade-mark for women's shoes the words "The American Girl," under which they advertised and sold their shoes throughout the United States. With full knowledge of this use, the defendants used on a similar grade of shoes the name "The American Lady," sometimes accompanied with their name as "maker," and sometimes with their name only, and sometimes alone. The Circuit Court of Appeals held that the plaintiffs' mark, when applied to women's shoes sold in America, was descriptive and geographical and not subject of a valid trade-mark, but enjoined the unfair competition, and ordered an accounting on the sales of defendants' shoes marked with "The American Lady" without their name as maker annexed. The case came to the Supreme Court on *certiorari*. *Held*, that the words "The American Girl" are subject of a valid trade-mark and that the decree ordering an accounting be affirmed upon that ground. *Hamilton-Brown Shoe Co.* v. *The Wolf Bros. & Co.*, 240 U. S. 251, 36 Sup. Ct. 269.

The plaintiffs sold hosiery under a label on which was written the word "Notaseme." Without knowledge of this use, defendants used a similar label with the word "Irontex" in place of "Notaseme." The plaintiffs notified the defendants that they were infringing their mark and brought a bill in equity to enjoin this use and to recover profits. There was no evidence of confusion in the public's mind. The markets of the two companies rarely conflicted. *Held*, that the defendants be enjoined from using the label, but an accounting